

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1404 of 2015

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Madan Mohan Kumar son of Haleshwar Prasad Yadav resident of Ariya,
P.O: Balha, P.S: Parbatta, District: Khagaria.

.... Petitioner/s

Versus

1. The Union of India through the Director, Central Industrial Security Force(C.I. S.F.) , Ministry of Home Affairs , New Delhi.
2. Inspector General, Central Industrial Security Force(C.I. S.F.) , Eastern Zone, H.Q. Boring Road, Patna-13 (Bihar).
3. Deputy Inspector General (Training), Central Industrial Security Force(C.I. S.F.) , FHQr., New Delhi.
4. Assistant Inspector General (L AND R) , Central Industrial Security Force(C.I. S.F.) ,FHQr, New Delhi.
5. Deputy Inspector General Central Industrial Security Force(C.I. S.F.) , Eastern Zone, H.Q. Boring Road, Patna-13 (Bihar).
6. Group Commandant , Central Industrial Security Force(C.I. S.F.) , Ministry of Home Affairs, Group H.Q. Boring Road, Patna through Chairman, DOSSIER Security Board.
7. Principal , C. I. S. F. , RTC Behror (Rajasthan).
8. Deputy Commandant , Central Industrial Security Force(C.I. S.F.) , Behroar (Rajasthan),.
9. Assistant Commandant , Central Industrial Security Force(C.I. S.F.) , M.P. R.T.C., Behror (Rajasthan).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Jha, Adv
For the Respondent/s : Mr. Sanjay Kumar(ASG)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 13-04-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ

application reads as follows:-

“For issuance of writ/writs, order/orders, direction/directions particularly in the nature of Certiorari for quashing of the impugned letter no. E-37015/Mr. Pr. KshPra.Ke.(Bah.)/Prashi./CT/GD Basic Trg./2014/3505 dated 18.04.14 issued by Deputy Commandant, C.I.S.F. Behroar (Rajasthan) whereby an whereunder the provisionally selected

for appointment issued in the name of the petitioner by the Group Commandant (Adm.), C.I.S.F.,-cum-Chairman Dossier Scrutiny Board, Group HQr. Patna vide letter no. E-32023/E2/OA/Combind/Rectt./Const. 12-13/2013-2902 dated 06.10.2013 is hereby withdrawn and cancelled.

For further prayer for direction upon the respondents to immediately appointed the petitioner on the post of Constable/G.D. in CAPFs-2012-13 in Central Industrial Security Force.

Further prayer of the petitioner for direction upon the respondents particularly respondent-Group Commandant, C.I.S.F., Group HQr. Patna Chairman Dossier Scrutiny Board, so that immediately appointed the petitioner in C.I.S.F., on the psot of Constable/G.D. while the petitioner was selected in all the tests such as running test, high jump test, long jump test as well as physical tests and written examination test and medical test in which petitioner was selected in all the tests.

For further prayer of petitioner for direction upon the respondents particularly respondent-Group Commandant, C.I.S.F., Group HQr. Patna Chairman Dossier Scrutiny Board so that to vacant one post particularly for the petitioner during the pendency of this writ application.”

Learned counsel for the petitioner in support of the aforementioned prayer has basically concentrated on the aspect that the impugned order passed by the competent authority of Central Industrial Security Force (CISF) cancelling the offer of appointment of the petitioner on the post of Constable is bad both on fact and in law, inasmuch as, the authorities have failed to consider that the



petitioner did not suppress any fact including his being involved in criminal case and further that he had also been declared successful in the physical and other tests. Strong reliance in this regard has been placed by learned counsel for the petitioner on the judgment of the Apex Court in the case of **Commissioner of Police & Ors vs Sandeep Kumar**, reported in **2011(2) PLJR 196 (SC)**.

Learned Assistant Solicitor General, appearing on behalf of the respondents on the other hand has submitted that when the petitioner had participated in the selection and had declared to have been facing criminal case, his papers were sent for verification of his criminal antecedent and in course thereof it was found that the petitioner was facing prosecution under sections-363, 365/34 of the Indian Penal Code and therefore, the petitioner was asked to produce all the relevant documents by a letter dated 29.11.2013 and upon its production and examination of the relevant



documents including the FIR and final form of the order of the Court as also the brief facts and present status of the case, the authorities of C.I.S.F. following the Government of India circular dated 01.02.2012, had taken a decision that since the petitioner was involved in a serious offence as specifically mentioned in the circular of Government of India, his candidature by way of provisional offer of appointment had been cancelled. He in this regard has also referred to and relied on the two judgments of the Apex Court in the case of **Delhi Administration through its Chief Secretary and Ors vs Sushil Kumar** reported in **1996(11) SCC 605** and **R. Radhakrishnan vs Director General of Police and Ors** reported in **2008 (1) SCC 660**.

In reply, learned counsel for the petitioner has tried to explain the nature of allegation against the petitioner for the offences punishable under sections- 363 and 365/34 of the Indian Penal Code and has



made great endeavour to establish that whatever allegations were made against the petitioner and in fact which were noted by the trial Court were itself absurd and the appellate Court had accordingly set aside the conviction and sentence which giving clean acquittal to the petitioner. He has therefore canvassed that this aspect of acquittal of the petitioner by way of subsequent event should be considered by the authorities and therefore, the impugned order should be quashed and the matter should be remitted back to the authorities of the CISF for reconsideration of the case of the petitioner.

In the light of the aforementioned submission and materials on record, this Court will have no difficulty in holding that the petitioner has no case on merit much less his matter being remitted back to the authorities for reconsideration of the impugned decision. The appointment of personnel in disciplined force has to be based on evaluation of both on merit



and integrity. The Government of India in the case of appointment in disciplined force has come out with its policy decision in its circular dated 01.02.2012 in the light of the observations made by the Delhi High Court in the case of Het Ram Meena vs Union of India (W.P. No. 2930 of 2011). This circular very clearly in paragraph nos. 2 and 3 lays down the norms of consideration. In the circular there is Annexure-A, which lays down as to when a candidate will not be considered for recruitment if he is involved in certain type of serious offences. In order to appreciate this aspect it would be relevant to quote paragraph no. 2 of the circular dated 01.02.2012, which reads as follows:-

“2. Accordingly, the matter has been considered in this Ministry in consultation with CAPFs, and it has been decided as follows:

*I. A candidate is required to declare in the application form, whether he has been arrested, prosecuted or convicted by a court for any criminal offence. If a candidate **does not disclose** the fact of his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. Under IPC or any other Act of the Central or State Government in the*



application form, during medical examination as well as in the attestation/verification form and the fact subsequently comes to the notice of recruiting authorities/is found out from the verification report received from the District authorities or otherwise, his candidature/appointment will be cancelled. However, in case the candidate has already been appointed, while canceling/terminating the appointment, the principle of natural justice shall be followed and opportunity of being heard would be accorded to the candidate.

II. If a candidate does not disclose his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. under IPC or any other Act of the Central or State Government in the application form but discloses the same during medical examination/PET and/or in the attestation/verification form, in writing, the candidature will not be cancelled on this ground alone.”

III. The candidate will not be considered for recruitment if:

- a) Such involvement/case/arrest is concerned with an offence mentioned in Annexure A;*
- b) Such arrest/detention is made under any of the Acts which are concerned with security and integrity of the country, terrorist and disruptive activities, acts against the State, insurgency, etc.;*
- c) The candidate has been detained under the National Security Act/Crime Control Act/any similar legislation, and the same is confirmed by the Reviewing Authority;*
- d) Such involvement/case/arrest is concerned with an offence involving moral turpitude;*
- e) He/she has been convicted by a Court in any case whether or not an appeal is pending against such conviction.*

Provided that the candidate shall not be barred in the above cases, if only an FIR has been registered/case is under investigation and no charges have been framed either on FIR or on the

complaint in any Court of Law.

Provided further that the candidate shall not be debarred if he/she has been finally acquitted/discharged by a Court, whether an appeal is pending or not against such acquittal.

Provided further that the candidate shall not be debarred if the proceedings are withdrawn by the Central/State Government.

Provided further that the candidate shall not be debarred if he/she has been involved/convicted/concerned with minor offences mentioned in Annexure B or those mentioned in Chapter VIII & X of Code of Criminal Procedure, 1973.

IV. Where a candidate has been convicted and awarded a jail-term of more than six months, he/she will generally not be considered suitable for appointment in the CAPF.

V. Notwithstanding the provisions of 3 (III) above, such candidates against whom chargesheet in a criminal case has been filed in the court and the charges fall in the category of serious offences or moral turpitude, though later on acquitted by extending benefit of doubt or acquitted for the reasons that the witnesses have turned hostile due to fear or reprisal by the accused person(s), he/she will generally not be considered suitable for appointment in the CAPF. The details of crimes which are serious offences or involve moral turpitude are at Annexure A. However, cases in which the criminal court, while acquitting, has categorically mentioned that the criminal case would not be a bar on appointment in Government Services, the candidate shall be considered for appointment in the concerned CAPF.

VI. Involvement in minor offences, traffic violations, juvenile in conflict with law (tried in open courts/Juvenile Justice Boards) and accident cases will not debar an individual for appointment in CAPFs & ARs provided that appointments for the post of Driver and those related to driving will not be offered to the individuals, punished for serious traffic offences.

VII. If a candidate is discharged by extending the benefit under the Probation of Offender Act, 1958,



the suitability of such candidates shall be put up for consideration of the selection committee as constituted by the DGs of CAPFs & ARs from time to time for assessing his/her suitability for appointment in the concerned CAPF.

A bare reading of the aforesaid circular would make it absolutely clear that since the recruitment are being made in the disciplined force the Government of India has come out with rational principal which has to be followed in all the cases. Such circular being based on an objective criteria, and in fact in the light of the observations of the Delhi High Court in the case of Het Ram (supra), when this Court would find that the petitioner was facing prosecution on the date on which he had filed his application for appointment on the post of Constable in CISF which was governed by Annexure-A of the circular dated 01.02.2012, inasmuch as, the offences under section 363, 365/34 of the Indian Penal Code and thus was to governed by clause no. 9 of the Circular contained in Annexure-A. The repeated emphasis of learned counsel for the

petitioner that he had himself made it clear in his declaration of his being involved in a criminal case in no way would go to improve the situation because what was declared by the petitioner has also been brought on record by the respondents in the counter affidavit, inasmuch as, all that the petitioner at that point of time on 22.10.2013 in answer to the information solicited in the prescribed proforma of Attestation Form had mentioned, reads as follows: _

CENTRAL INDUSTRIAL SECURITY FORCE
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
ATTESTATION FORM

WARNING

The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification and is likely to render the candidate unfit for employment under the Government.

2. If detained, convicted, debarred etc. subsequent to the completion and submission of this Form the details should be communicated immediately to the authority to whom the Attestation Form has been sent earlier failing which it will be deemed to be a suppression of factual information.

3.If the fact that false information has been furnished or that there has been suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person, his services would be liable to be terminated.

1.Name in full (in Block Capitals) with aliases, if any, (Please indicate if you have added or dropped at any stage, any part or your name or surname)	Surname KUMAR	MADAN MOHAN KUMAR
2. Present Address in full (i.e. Village, Thana and District, or House Number, Lane/Street/Road/Town)	VILL ARAYA, P.S PARBATTA STATE BIHAR	P.O BALHA DIST KHAGARI PIN 851203
3. (A) Permanent Home address in full (i.e. Village, Thana and District, or House Number, Lane/Street/Road/Town and Name of District Headquarters).	VILL ARAYA P.S PARBATTA STATE BIHAR	P.O. BALHA DISTTA KHAGARI PIN 851203
(b) If originally a resident of Pakistan, the address in that country and the date of migration to Indian Union.	HOUSE NO. 19	
4. Particulars of places with periods of residence where you have resided for		

more than one year at a time during the preceding five years. In case of stay abroad (including Pakistan), particulars of all places where you have resided for more than one year after attaining age of 21 years should be given.

From	To	Residential address in full (i.e. Village, Thana and District or House No., Lane/Street/Road/Town	Name of District Headquarters of the place mentioned in the preceding columns
Janam	say	VILL - ARAYA	
Abhi Tak		P.O. - BALHA	
		P.S - PARBATTA	
		DISTRICT- KHAGARIA	
		STATE - BIHAR	
		HOUSE NUMBER- 19	
		PIN- 851203	

Name	Nationality (by birth and/or by domicile)	Place of Birth	Occupation (if employed, give designation and full official address)	Present Postal address (if dead, give last address)	Permanent Home Address
Madan Mohan Kumar					
(i) Father (Name in full with alieases, if any)	Haleshwar Prasad Yadav Indian Chandrakala	Village Araria (Khagaria			Vill Araria Thana Parbatta Post Balha District- Khagaria (Bihar) PIN 851203
(ii) Mother	Devi				
(iii) Wife/Husband	Sonu Kumar				
(iv) Brother					
(s) Prati	Pratibha				
(v) Sister(s)	Kumari				

5. Information to be furnished with regard to son (s) and/or daughter(s) in case they are studying/living in a foreign country.

Name	Nationality (by birth and/or by domicile)	Place of birth	Country in which studying/living with full address	Date from which studying/liv ing in the country mentioned in previous column
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6. Nationality

Indian
7. (a) Date of birth

(a) 12.11.1991

(b) Present age

(b) 21 years 11 Months 09 days
- (c) Age at Matriculation

(c) 15 years
- 8 (a) Place of birth, District and State in which it is situated.

ARARIYA DISTRICT KHAGARIA STATE BIHAR

(b) District and State to which you belong

(b) DIST KHAGARIA, STATE-BIHAR

(c) District and State to which your father originally belongs.

(c) DIST KHAGARIA, STATE-BIHAR
9. (a) Your religion

(b) Are you a member of a Scheduled Caste/Scheduled Tribe? Answer 'Yes' or 'No' and if the answer is 'Yes' state the name thereof.

10. Educational Qualifications showing places of education with year in schools and colleges since 15th years of age.

Name of School/College with full address	Date of entering	Date of leaving	Examination Passed
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11. (a) Are you holding or have any time held an appointment under the Central or a State Government or a semi-Government or a quasi-Government body or an autonomous body or a public undertaking or a private firm or Institutions? If so, give full particulars with dates of employment, up-to-date:

Period		Designation, emoluments and nature of employment	Full name and address of employer	Reasons for leaving previous service
From	To			

(b) The previous employment was under the Govt. of India or State Govt., an undertaking, an owned or controlled by the Govt., of India, or s State Govt., an autonomous body/University/local body.

If you had left service on giving a month's notice under rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 or any similar corresponding rules, were any disciplinary proceedings framed against you or had you been called upon to explain your conduct in any matter at the time you give notice of termination of service or at a subsequent date, before your services actually terminated.

12. (a)Have you ever been arrested? -----Yes/No.
- (b) Have you ever been prosecuted? -----Yes/No.
- (c) Have you ever been kept under detention?- -----Yes/No.
- (d) Have you ever been bound down? -----Yes/No.
- (e) Have you ever been fined by Court of law?-- -----Yes/No.
- (f) Have you ever been convicted by a Court of law for any offence -----Yes/No.
- (g) Have you ever been debarred from any examination or rusticated by any University or any other Educational Authority/Institution? -----Yes/No.
- (h) Have you ever been debarred/disqualified by any Public Service Commission for any of its examinations/selections? -----Yes/No.
- (i) Is any case pending against you in any Court of law at the time of filling up this Attestation Form? -----Yes/No.
- (j) Is any case pending against you in any University or any other Educational Authority/Institution at the time of filling up this Attestation form? -----Yes/No.
- (k) Whether discharged/expelled/withdrawn from any Training Institution under the Government or otherwise? -----Yes/No.
- If the answer to any of the above mentioned question is 'yes' give

full particulars of the case/arrest/detention/fine conviction/sentence/punishment etc. and/or the nature of the case pending in the Court/University/Educational Authority etc. at the time of filling up this form.

Note: (i) Please also see the “warning” at the top of this Attestation Form.

(ii) Specific answers to each of the questions should be given by striking out, ‘Yes’ or ‘No’ as the case may be.

(1) “Are you or have you ever been a member of a Party or Organisation of Political Communal or Cultural nature? If so, state the name of the Party or Organisation with the period/periods of your membership therein”.

Thus, whatever information was given by the petitioner did not disclose as to the nature and in particular of allegation in the pending criminal case. In fact from the facts stated by the petitioner in the application form, the respondents could not have become aware as to the involvement of the petitioner for offence under Section 363, 365/34 of the Indian Penal Code.

In that view of the matter this Court will not find any merit in the submission of learned counsel for the petitioner that since the petitioner was allowed to compete in the physical or other tests after his aforesaid declaration of being involved in a criminal case his offer of appointment on being successful in those qualification test could not have been cancelled.



The petitioner in fact has suppressed the information specifically in column no. 10, because he was required to give particulars and nature of the criminal case and infact he did not furnish even about the case number and offences and thus when he had only mentioned that a criminal case was pending against him he had infact withheld the vital information and thus was liable to pay the consequences in the warning given in prescribed proforma of attestation form which reads as follows:- .

"The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification and is likely to render the candidate unfit for employment under the Government.

2. If detained, convicted, debarred etc. subsequent to the completion and submission of this Form the details should be communicated immediately to the authority to whom the Attestation Form has been sent earlier failing which it will be deemed to be a suppression of factual information.

3.If the fact that false information has been furnished or that there has been suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person, his services would be liable to be terminated. "

Judged in this background, when in the criminal antecedent certificate and report of the officer-in-charge had exposed that the petitioner was facing prosecution for the offences punishable under



Sections-365/34 of the Indian Penal Code it was but natural that the authorities had to take action as already indicated in the attestation form. As a matter of fact after the petitioner was given offer of his appointment on 6.10.2013 asking him to submit his joining on or before 28.10.2013 with a character and antecedents certificate and when he the same was produced by the petitioner it becomes clear of his being mentioned in the aforesaid serious offence inasmuch as the same had read as follows:-

"CHARACTER AND ANTECEDENTS CERTIFICATE

(To be filled and signed by the SHO of local Police Station)

Certified that the Character and Antecedent in respect of Shri MADAN MOHA N KUMAR son of Shri HALESHWAR PD. YADAV resident of ARRIYA Post BALAHA, District- KHAGARIA Police Station- PARBATT (MARIAYA) State BIHAR has been verified by me and found that are is no adverse notice either politically or otherwise are recorded in Police Station. As such, there is no objection to his appointment in the Central Industrial Security Force.

महाशय,

आवेदक मदन मोहन कुमार पे० श्री हालेश्वर प्रसाद यादव सा० अररिया थाना परबत्ता (मरैया) जिला खगड़िया का नाम पता सही है। ये परबत्ता (मरैया) थाना कांड सं० 210/9 दि० 9/12/09 धारा 363/365/3A भा०द०वि में आरोपपत्रित है। इस बात के अलावा इतना घोर अपराध इतिहास परबत्ता (मरैया) थाना में नहीं है। इस कांड में वादी द्वारा इनका कागजात कर लिया गया है।

ह०/-
19/X/13
थानाध्यक्ष
मरैया

DR No. 36/13
19-10-13



Thus it now becomes absolutely clear that the authorities in view of aforesaid certificate had rightly asked the petitioner to produce all the relevant papers including FIR, chargesheet etc. The petitioner as noted above was finally prosecuted for the offences punishable under Sections-363, 365/34 of the Indian Penal Code for which a First Information Report was lodged in the year 2009 and trial was already underway the date on which the petitioner had filled his attestation form and submitted his for selection on the post of Constable in CISF. The circular as noted above very clearly lays down that those who are involved in criminal offence as mentioned in Anneuxre-A to the circular as quoted above will not be considered for appointment and therefore, when the attestation report was silent and it came to be discovered from the criminal antecedent certificate of the petitioner given by the Officer-in-charge of Parbatta (Mariaya) Police Station that he was facing



prosecution for the offences punishable under Sections 363, 365/34 of the Indian Penal Code, the authorities had again asked the petitioner to produce the relevant records and thereafter they have come out to pass the impugned order in question.

The plea of learned counsel for the petitioner that the petitioner was not given opportunity of hearing before cancellation of his candidature has to be understood in the context that the petitioner has suppressed information about the offence in the attestation form and that it was discovered from the criminal antecedent certificate of the Officer-in-charge, the petitioner was immediately asked to produce relevant documents including copy of FIR, chargesheet etc. As a matter of fact no right can be said to have been acquired by the petitioner merely by issuance of interview letter because appointment on particular post is subject to fulfillment of the terms and conditions. The offer of appointment itself

records the following clause:-

“If you accept the above mentioned terms and conditions, you may report to CISF RTC BEHROR ON 26.10.2013 for joining the post of Constable GD in the Central Industrial Security Force and undergoing the basic training schedule to commence w.e.f 28.10.2013. In case you fail to report to the training centre on the stipulated date, it will be presumed that you are not interested to accept this offer and the candidature will automatically stand cancelled.”

The terms and conditions therefore had required the petitioner to appear with the documents and at that point of time it was detected that the petitioner was accused for the offences punishable under Sections-363, 365/34 of the Indian Penal Code under which the appointment could not have been made as per the Government of India instructions/circular dated 01.02.2012.

Thus, what was said by the Apex Court in the case of **Delhi Administration (supra)** can squarely be made applicable to the facts of the present case:-

“This appeal by special leave arises from the order of the Central Administrative Tribunal, New Delhi made on September 6, 1995 in OA No. 1756/91. The admitted position is that the respondent appeared for recruitment as a Constable in Delhi Police Services in the year 1989-90 with Roll No.65790. Though he was found physically fit through endurance test, written test and interview and was selected provisionally, his selection was subject to verification of character; and antecedents by the



local police. On verification, it was found that his antecedents were such that his appointment to the post of Constable was not found desirable. Accordingly, his name was rejected. Aggrieved by proceedings dated December 18, 1990 culminating in cancellation of his provisional selection, he filed OA in the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with 34 IPC and under Section 394 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, Passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate.”

The Apex Court in another judgment in the case of **R. Radhakrishnan (supra)**, had also held as follows:-

“Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard expected



of a person intended to serve in such a service is different from the one of a person who intended to serve in other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed.

The question came up for consideration before this Court in Delhi Administration v. Sushil Kumar [(1996) 11 SCC 605] wherein it was categorically held:

The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with Section 34 IPC and under Section 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted.”

These two judgments in fact clearly lay down the law that no right can be said to have been claimed by a person only because he was called for interview or had succeeded therein. The aforesaid judgments are



also a clear authority on the aspect that the result of the criminal case will have no bearing on the decision of the authority rejecting the claim of a person facing prosecution for serious offences.

This court however must examine the judgment of the Apex Court in the case of Sandeep Kumar (supra) from which it emerges that there was a completely different scenario in which the Apex Court exercising power under Article 142 of the Constitution of India had held that after a person has already been appointed and was working, his appointment should not have been cancelled even if he had suppressed facts as with regard to his being involved in a criminal case of minor offence. The observations by the Apex Court firstly apply will to a person who has already been employed in service and that he too if he was facing only prosecution for a minor offence. Thus whatever was said in the case of Sushil Kumar (supra) in no view of the matter can be



made applicable in the case of the petitioner firstly because he was only given an offer of appointment and yet to be appointed and secondly his being involved in criminal case for the offences punishable under sections 363, 365/34 of the Indian Penal code which being punishable for a period of seven years rigorous imprisonment can also not be held as minor offence, which also came to be noticed even after offer of appointment was issued to the petitioner. This subtle and yet a vital distinction on fact will also make a world of difference making the case of Sushil Kumar (supra) applicable to the case of the petitioner.

Thus for the reasons indicated above this Court does not find any error in the decision of the authority to have followed the circular of Government of India and rejected the candidature of the petitioner on the ground that on the date on which he was provisionally selected, he was facing prosecution for serious offence and thus was not a fit person to be appointed

on the post of Constable in CISF.

That being so, this writ application fails and is,
accordingly, dismissed.

(Mihir Kumar Jha, J)

